

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *eg* D.C.
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THOMAS M. COULD
CLERK, U.S. DISTRICT COURT
WD OF TN, MEMPHIS

LOUISE AFFLIS,

Plaintiff,

vs.

No. 03-2714 BP

BAPTIST MEMORIAL HOSPITAL
d/b/a BAPTIST MEMORIAL
HOSPITAL-COLLIERVILLE,

Defendants.

ORDER GRANTING DEFENDANT'S EMERGENCY MOTION FOR PROTECTIVE ORDER
QUASHING NOTICE OF EVIDENTIARY DEPOSITION

Before the court is defendant Baptist Memorial Hospital's Emergency Motion for Protective Order Quashing the Notice of Evidentiary Deposition of Karen Wolstein, D.C., filed on August 17, 2005. In the motion, defendant asks the court to quash the deposition notice for Dr. Karen Wolstein, which is set for Tuesday, August 23, 2005, in Clearwater, Florida. Dr. Wolstein is the chiropractor who treated the plaintiff for her alleged injuries over a two year period. As a result of this treatment, the plaintiff incurred medical expenses of approximately \$18,000. The trial is currently set to begin on Monday, August 29, 2005. On Tuesday, August 16, 2005, the plaintiff noticed Dr. Wolstein's deposition to take place on August 23 in Florida. The plaintiff

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intends to take Dr. Wolstein's evidentiary deposition in order to present proof at trial that these chiropractor bills were reasonable. On August 19, 2005, the court held an expedited hearing on the motion. Counsel for all parties were present and heard. At the conclusion of the hearing, the court GRANTED the motion to quash as follows:

The court entered a scheduling order in this case on December 10, 2003. The order required that all depositions be completed by the discovery deadline which, as amended, was May 6, 2005. The order provided that "absent good cause shown," the deadlines in the scheduling order would not be modified or extended. The order clearly governs all depositions -- whether for discovery or evidentiary purposes -- and the court finds that plaintiff has not shown the required good cause.¹

The plaintiff has known about Dr. Wolstein since the beginning of this lawsuit. She could have and should have deposed her well before the discovery deadline, and certainly well before the eve of trial. Nothing prevented the plaintiff from taking Dr. Wolstein's deposition earlier other than her interest in minimizing her litigation expenses, which does not amount to good cause. Instead, as plaintiff stated at the August 19 hearing, her desire to depose Dr. Wolstein stems from evidentiary objections raised by the

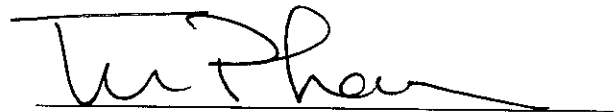
¹In any event, even if some standard less than good cause applied, the court in its discretion nevertheless concludes that the motion must be granted, for the same reasons stated in this order.

defendant in its pending motions in limine. Plaintiff's intention to cure the alleged evidentiary defects in her case also does not amount to good cause to depose Dr. Wolstein one week before trial.

Finally, the court concludes that the defendant would be prejudiced if the court were to allow the deposition to proceed. Counsel for defendants are currently preparing their case, including numerous witnesses, for trial. They also have commitments on unrelated matters before other courts. At this point in the litigation, the court believes it would be unfair and prejudicial to the defendants to require counsel to appear at Dr. Wolstein's deposition, whether in person or by telephone.

For the reasons above, Defendants' motion is GRANTED.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Tu M. Pham', written over a horizontal line.

TU M. PHAM
United States Magistrate Judge

August 19, 2005
Date



Notice of Distribution

This notice confirms a copy of the document docketed as number 66 in case 2:03-CV-02714 was distributed by fax, mail, or direct printing on August 22, 2005 to the parties listed.

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Honorable J. Breen
US DISTRICT COURT